

**EXAMINER'S AMENDMENT & STATEMENT OF REASONS FOR ALLOWANCE*****Table of Contents***

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***Amendments & Claim Status***

[1] This "Examiner's Amendment & Statement of Reasons of Allowance" is responsive to "Amendment in Response to Non-Final Office Action" (Amendment) received Sep. 18, 2009, and the attached "Interview Summary" dated Sep. 28, 2009. Claims 1-2, 5, 9, 11-16, and 18-21 remain pending; Claims 3-4, 6-8, 10, and 17 cancelled.

***Response to Arguments******Remarks Persuasive regarding Rejections Under 35 U.S.C. § 102, 103***

[2] Amendment at 7-9 regarding rejected Claim 21 under 35 U.S.C. § 102(b) as being anticipated by Kowald (U.S. Pub. No. 2003/0002715), rejected Claims 1-2, 11, 13-15, and 18-20 under 35 U.S.C. § 103(a) as being unpatentable over Kowalk in view of Khan (U.S. Pub. No. 2003/0126121); rejected Claims 5 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Kowald in view of Khan and further in view of Bhatt (U.S. Pub. No. 2002/0118883); rejected Claim 12 under 35 U.S.C. § 103(a) as being unpatentable over Kowalk in view of Khan in further view of Sano (U.S. Patent No. 6,079,885); and rejected Claim 16 under § 103(a) as being unpatentable over Kowald in view of Khan and further in view of Tsukagoshi (U.S. Patent No. 5,848,217) have been respectfully and fully considered, and are found persuasive.

***Claim Rejections - 35 U.S.C. § 102-103***

[3] In response to Amendment at 7-9, the previous 35 U.S.C. § 102-103 rejections are withdrawn.

***Formal Examiner's Amendment***

[4] This formal Examiner's Amendment is responsive to the telephone interview dated Sep. 28, 2009. See attached "Interview Summary".

Examiners may use an examiner's amendment to correct a non-compliant amendment filed by the applicant if the amendment would otherwise place the application in condition for allowance (e.g., a reply to a non-final Office action or an after- final amendment includes an incorrect status identifier). See MPEP § 714, subsection II.E, Examiner's Amendments.

M.P.E.P. § 1302.04.

[5] Authorization for this examiner's amendment was given in a telephone interview with Cathy Voisinnet (Reg. No. 52,327) on Sep. 28, 2009.

This formal Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

*Amendment to the Claims*

Claim 1, lines 20-24:

“(i) degree of underexposure or overexposure ~~under/overexposure~~, degree of defocus, and degree of blur, in the case of a group classified as landscape photographs; and

(ii) degree of underexposure or overexposure ~~under/overexposure~~, degree of defocus, degree of blur, degree of defocus of a facial portion, and whether eyes of a subject are open, in a case of a group classified as portrait photographs.”

Claim 18, lines 21-25:

“(i) degree of underexposure or overexposure ~~under/overexposure~~, degree of defocus, and degree of blur, in the case of a group classified as landscape photographs; and

(ii) degree of underexposure or overexposure ~~under/overexposure~~, degree of defocus, degree of blur, degree of defocus of a facial portion, and whether eyes of a subject are open, in a case of a group classified as portrait photographs.”

Claim 21, lines 15-19:

“(i) degree of ~~underexposure or overexposure~~ ~~under/overexposure~~, degree of defocus, and degree of blur, in the case of a group classified as landscape photographs; and

(ii) degree of ~~underexposure or overexposure~~ ~~under/overexposure~~, degree of defocus, degree of blur, degree of defocus of a facial portion, and whether eyes of a subject are open, in a case of a group classified as portrait photographs.”

***Allowable Subject Matter***

[6] Claims 1-2, 5, 9, 11-16, and 18-21 allowed.

***Reasons for Allowance***

[7] The following is an examiner’s statement of reasons for allowance:

Regarding Claim 1, while the prior art of record teaches Claim 1, May 4, 2009 (see Office Action, Jun. 19, 2009), the prior art of record does not teach the selection condition setting means sets and stores, as the selection conditions:

(i) degree of under or overexposure, degree of defocus, and degree of blur, in the case of a group classified as landscape photographs; and

(ii) degree of under or overexposure, degree of defocus, degree of blur, degree of defocus of a facial portion, and whether eyes of a subject are open, in a case of a group classified as portrait photographs.

Claims 18 and 21 allowable by analogy. Claims 2, 5, 9, 11-16, and 19-20 allowable by dependency.

[8] Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance”.

***Conclusion***

[9] Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID P. RASHID whose telephone number is (571)270-1578

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and fax number (571)270-2578. The examiner can normally be reached Monday - Friday 7:30 - 17:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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